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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
Appellants,

v.

EILEEN LOPEZ, ET AL.,
Appellees.

On Appeal from a Three-Judge
United States District Court
for the Southern District of Ohio,
Eastern Division

REPLY BRIEF FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

INTRODUCTION

Appellees and their friends through the argument they present, urge this Court to conclude that the due process clause of the Fourteenth Amendment applies to students in Ohio public schools who are subject to academic discipline in the form of short term suspensions.

The arguments asserted proceed from a foundation which treats and equates education as representing nothing more than an institutionalized process. Presence in a particular school building or in a particular school system assumes an importance equal to or greater than, the actual pursuit of knowledge. Presence in a particular school system or school building represents education.

This preoccupation with education viewed as a caretaker function demonstrates itself most clearly in appellees' assertion that students who have been suspended have a greater chance of contact with the police. [Brief of Appellees, p. 36.]

While historical and judicial support for this argument appears lacking, the argument is important to appellees' conclusion that the issue to be decided by this Court in the present case is no different than the issues which confronted the Court in the welfare, commercial and even criminal law areas.

The present case does not present a situation warranting the adoption of the narrow theory that being part of an institutionalized process means education.[1] Appellees were never deprived of that free choice right to train their minds. Further, they participated in the process and even received the product of the process, a diploma. What this case does involve is the right of a state legislative body to decide, in establishing a system of public education, how the system will operate, the power that will be given principals to manage and control the daily operation of the system, including even the restrictions that will be placed on that power, and the relationship that will exist between those who operate the system and those who are participants. In exercising such legislative power and discretion, the state legislature of Ohio did not act in a manner such as deprived appellees of a right of liberty or property protected by the due process clause when they restricted the power of a principal to summarily suspend to a period of ten calendar days.

1. "In modern society where a large number of our values are being re-examined there is no need to conclude that 'education' the pursuit of knowledge, a personal activity means nothing more than being part of an institutionalized process. The pursuit of knowledge should remain a broad concept." Ivan Illich, *Deschooling Society*, Harper & Row (1971) 38-39, 73-104.

ARGUMENT

Several points need to be made with regard to the broad sweeping arguments relating to the application of the due process clause asserted by appellees and their friends. These points or principles relate chiefly to the framework within which this entire question of academic discipline and the due process clause, separated from the involvement of any First Amendment issue, race issue, or unequal application issue must be examined. Serious consideration of these principles, divorced from a parade of fears supports a conclusion that a legislature that passes a statute similar to Section 3313.66 of the Ohio Revised Code does not violate specifically identifiable constitutional interests protected by the due process clause.

THE COMMON SCHOOL SYSTEM HISTORICALLY ESTABLISHED TO PROTECT THE STATE FROM AN UNEDUCATED CITIZENRY CANNOT BE EQUATED WITH MORE RECENT AREAS OF LEGISLATIVE CONCERN.

1. The actual historical framework within which systems of local education arise is overlooked by appellees and their friends. Particularly overlooked is the fact that a system of public education is established by the state for the purpose of furthering the interest of the state, namely, the protection and improvement of the state as a political entity. The primary aim is not the specific benefit of any one individual. *Bissell v. Davison*, 32 A. 348, 349 (1849); *Fogg v. Board of Education*, 82 A. 173, 174-175 (1912); *State, ex rel., Lien v. School Dist. No. 73 of Stillwater County*, 76 P.2d 330, 331 (1938); *Opinion of the Justices*, 233 A.2d 832, 837 (1967); and Arval Morris, *The Constitution and American Education*, West Publishing Company (1974) 113, 204-205.

2. If one gives proper recognition to the historical

premise that systems of local education were created and designed to perform a societal function as opposed to a purely personal function; then it is clear that this Court in a case involving purely the internal operation of the system is not faced with the type of situation presented in *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287 (1970); *Fuentes v. Shevin*, 407 U.S. 67, 32 L.Ed.2d 556 (1972); or *Sniadach v. Family Finance Corp.*, 395 U.S. 377, 23 L.Ed.2d 349 (1969). Justice Powell's analysis of *Goldberg v. Kelly, supra*, contained in his concurring opinion in *Mitchell v. W. T. Grant Co.*, ___ U.S. ___, 40 L.Ed.2d 406, 424 (1974), wherein that case was placed in the category of cases involving a question of "brutal need" certainly distinguishes the case from the present situation.[2] Certainly this Court is not faced with a situation involving such a threat to life as to present a case of "brutal need." Further, this Court's analysis of welfare benefits as contrasted with other government actions cannot be overlooked, *Goldberg v. Kelly*, 397 U.S. at 262-264. *Fuentes v. Shevin, supra*, and *Sniadach v. Family Finance Corp., supra*, involve questions of pure personal property and relations between consumers and vendors or the assignees of vendors and bear no similarity to the instant situation. In fact, *Sniadach v. Family Finance Corp., supra*, might well be placed in the category of cases such as *Goldberg, supra*, wherein questions of brutal need might arise. Concurring opinion of Justice Powell, *Mitchell v. W. T. Grant Co.*, 40 L.Ed.2d at 425-426, footnote three. The field of commerce and the attendant problems surrounding personal property, contract and the potential affects on life, bear no relationship to the internal operation and management of a state created system of common schools created to protect the state from an uneducated citizenry. The history sur-

2. Equally worthy of note is the analysis found in Justice Powell's concurring opinion in *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 41 (1974).

rounding the evolution and growth of systems of common education, such as the system established in Ohio and the well-established premise that local authorities do possess judgmental decision making power where the question concerns the control and operation of such systems, illustrates the dissimilarity.

3. Unless the historical concept that common school systems are established by the state for essentially its own protection is abandoned, and unless continued recognition of the policy making power possessed by states where the question involves both the operation and control of local systems is to cease, it cannot be said that the state's interest in the day-to-day dispatch of affairs within that system is one less significant than a government employer's interest. A requirement of prior adversary hearings fastened to a principal's duties in conducting the daily affairs within a school system certainly places the principal in an awkward position with respect to the students he must both control and direct and certainly has no less consequence than those present in the relationship existing between federal employer and employee. *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 41 (1974) concurring opinion of Justice Powell.

4. The pattern of legislation in Ohio under which the state established its system of public education is typical of legislation creating a system of public common education and that pattern of legislation places wide discretion in boards of education in the government of their employees and students who participate in the system. Section 3313.20, Ohio Revised Code, and Section 3313.47, Ohio Revised Code. *Greco v. Roper*, 145 Ohio St. 243, 61 N.E.2d 307 (1945); *Holroyd v. Eibling*, 90 Ohio Law Abs. 78, 116 Ohio App. 440 (1961). Section 3313.66, Ohio Revised Code, reflects a policy decision on the part of the Ohio Legislature to the effect that the broad discretion given to principals and administrators is to be lim-

ited, in that a suspension given to a student cannot last longer than ten days.

THE QUESTION OF THE LENGTH OF A SUSPENSION AND PROCEDURES NECESSARY TO IMPLEMENT THAT SUSPENSION PRESENTS A POLICY QUESTION TO BE DETERMINED BY LEGISLATIVE JUDGMENT.

5. In terms of the construction and application of the due process clause, what is really involved in this case is a question of conduct regulating policy; the power of teachers and principals to regulate and control conduct in the classroom and in the school of a state created system of common schools. Viewed in that sense, questions of conduct regulation involve issues formerly considered under substantive due process, as opposed to pure procedural due process. Leonard G. Ratner, "The Function of the Due Process Clause," 116 U. Pa. L.Rev. 1048, 1050-1053 (1968). Absent questions relating to the First Amendment, discrimination, or decisions based on race, religion or sex, no provision of the Constitution proscribes the state's authority to regulate conduct within its own facility. Ratner, *supra*, 116 U. Pa. L.Rev. 1048, 1060-1063 (1968). The area of the establishment of a common school system, including making provision for the control of teachers and students, in the absence of the implication of a fundamental specifically identified interest, should remain viewed as one involving considerations over which this Court will not substitute its wisdom for that of the legislative body. *Linwood v. Board of Education of Peoria*, 463 F.2d 763, 768-769, *cert. denied*, 409 U.S. 1027 (1972); *Ferguson v. Skrupa*, 372 U.S. 726, 731, 10 L.Ed.2d 93, 97-98 (1963); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, ___ U.S. ___, 38 L.Ed.2d 379, 386-387 (1963); *Healey v. James*, 408 U.S. 169, 203, 33 L.Ed.2d 266, 292 (1972),

concurring opinion of Justice Rehnquist; Ratner, *supra*, 116 U. Pa. L.Rev. 1048, 1080 (1968) and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800 (1974). Particularly is this analysis compelling in the area of suspensions. The issue surrounding the establishment of a suspension procedure including how long a suspension may be issued without a hearing is a legislative question.

6. Unless the principle is to be adopted that the due process clause applies to every conceivable situation, a position specifically disavowed by this Court in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 6 L.Ed.2d 1230 (1961), then it would appear, at least in the area of suspensions in common school systems, that this Court is faced with an area of concern open to the exercise of legislative judgment. That being the case, the question of how long a suspension may be handed out without prior hearing poses a question of substantive rather than procedural due process. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-387; *Ferguson v. Skrupa, supra; Linwood v. Board of Education of Peoria*, 463 F.2d at 768-769; *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 32-33 (1974); and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800, 816-836 (1974). Certainly, the state in the creation and operation of its own system of common schools can decide within the framework of its legislative power whether or not a principal should have to afford a prior hearing before suspending a student for ten calendar days. If a state may validly decide who shall engage in the business of debt adjusting, then it certainly possesses the legislative power to decide in the exercise of its wisdom both what power a principal shall have to manage and control a school and the manner in which that power

should be restricted.[3] *Ferguson v. Skrupa*, 372 U.S. at 731, and *St. Ann v. Palisi*, 495 F.2d 423, 429-434 (1974) [dissenting opinion of Judge Roney].

7. Such cases as *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 39 L.Ed.2d 52 69-70 (1974) concurring opinion of Justice Powell; *Karr v. Schmidt*, 401 U.S. 1201, 27 L.Ed.2d 797 (1971), dissenting opinion of Justice Black; *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526, 21 L.Ed.2d 731, 749 (1968), dissenting opinion of Justice Harlan and concurring opinion of Justice Stuart; *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228 (1968); *Waugh v. Board of Trustees of the University of Mississippi*, 237 U.S. 589, 59 L.Ed. 1131, 1136 (1915); *Wright v. Council of City of Emporia*, 407 U.S. 451, 478, 33 L.Ed.2d 51, 70 (1972) dissenting opinion of Chief Justice Burger;[4] and *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069 (1954)[5] and the expres-

3. The comment of Justice Holmes in *Truax v. Corrigan*, 257 U.S. 312, 344, 66 L.Ed. 254, 268 (1921) is worthy of observation in this case: "I must add one general consideration. There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

4. The pronouncements to be found in these decisions represent a clear pattern of recognition of the fact that in the area of local common schools states do possess discretionary authority to run their local schools as their judgment dictates. The weight to be given to the recognition of such authority is similar to the weight that was given the long recognition of policy in *Galvan v. Press*, 347 U.S. 522, 530-531, 98 L.Ed. 911, 921-922 (1953). Section 3313.66 of the Ohio Revised Code does not amount to an abuse of that discretionary authority.

5. In *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069, 1089, that recognition is stated clearly in the following manner: "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. * * * Thus, in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 50, 36 L.Ed.2d 16, 93 S.Ct. 1278, we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation and a healthy competition for educational excellence!" Academic discipline is very much a part of that process. Involved in the structuring of school programs and relationships is the question of academic discipline and the form it will take. Academic discipline and the educational process are not mutually exclusive. *Laucher v. Simpson*, 28 Ohio App.2d 195, 198, 276 N.E.2d 261 (1971).

sions contained therein recognize the broad authority of state legislatures in the area of operating and controlling local schools according to their best judgments and really represent pronouncements similar to that contained in *Ferguson v. Skrupa*, 372 U.S. 726, 10 L.Ed.2d 93 (1963) all to the effect that with respect to common schools established by the state, absent infringement of a specifically identified constitutional interest, there is an area within which legislative judgment is free to operate in providing conduct regulating legislation, an area into which this Court will not invade and substitute its judgment. Section 3313.66 of the Ohio Revised Code is a statute which falls within the legislative area where the state is free to decide for itself not only what legislation is needed to control the internal affairs of its schools, but the kind of restrictions that should be placed on that authority. The District Court in this case and other Federal Courts past and present in addressing the question of suspension [Brief of Children's Defense Fund, pp. 26-27] have engaged in a substantive due process substitution of their judgment for that of the legislature, the body charged both with providing for the internal management of local schools and with establishing and defining the authority of local teachers and administrators. This Court has rejected such an approach in reviewing legislation to determine if it conforms with the Constitution. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-389.

THE PASSAGE OF A COMPULSORY EDUCATION LAW DOES NOT SERVE TO CREATE A PROPERTY RIGHT FOR THOSE WHO ATTEND THE STATE'S SYSTEM OF COMMON SCHOOLS.

8. The state has not created a right of property within the meaning of *Board of Regents v. Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (1972) when it established a common school system for its protection. Examination of the sys-

tem of common schools established in Ohio does not disclose that the legislature intended to confer upon students a status such as would make the occupation of a school building a protected property right. Chapter 3321 of the Revised Code projects the public policy of the state common schools. *State v. Gans*, 168 Ohio St. 174, 5 Ohio Ops.2d 472, 476 (1958). Article VI, §2 of the Ohio Constitution directs the legislature to use tax funds for the provision of a system of common schools. Article VI, §3 of the Ohio Constitution directs the legislature to provide for the organization, administration and control of the common school system called for under §2. The legislature in §3313.47 of the Ohio Revised Code placed the management and control of the common schools thus created in the respective local school boards. The legislature also in §3313.20 gave each board of education general power to prescribe rules and regulations "for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." Consideration of these constitutional provisions and statutes passed in furtherance of a common school system does not support a conclusion that the legislature intended to confer upon students a status akin to a property right. Neither §3313.20 of the Revised Code which confers a broad grant of power nor §3313.66 of the Revised Code which places a restriction on the authority of the principal requires that a student be granted a hearing prior to the administration of academic discipline. The claimed existence of a property right should be compared with the analysis of a property right in *Jafree v. Scott*, 372 F.Supp. 264, 270-272 (1974); *Adams v. Walker*, 492 F.2d 1003, 1006 (1974) and *Shirck v. Thomas*, 486 F.2d 691, 692 (1973). A statutory entitlement is not to be found with the statutory

scheme enacted by Ohio in formulating its common school system.[6]

The object of Ohio's compulsory education law may be expressed in terms of legislation whose objective is the enforcement of the parents' natural obligation to provide an education for their young. In other words, the compulsory education law places a duty on the parents to choose either public or private schools. Thus, in enforcing this natural obligation the state protects itself from a uninformed citizenry. *People v. Levisen*, 90 N.E.2d 213, 215 (1950) and *State, ex rel., Chafin v. Glick*, 172 Ohio St. 249 (1961). In §§3313.67 and 3313.671 of the Ohio Revised Code certain vaccinations and immunizations are made compulsory; however, one would not seriously argue that they confer a property right. Further, a similar compulsory attendance and participation aspect is present in military service under the draft; however, no one would argue that compulsory attendance or participation resulting from the draft creates a property right.

A property interest arising by virtue of state law was not involved in this case. *Perry v. Sindermann*, 408 U.S. 593, 602, 33 L.Ed.2d 570, 580 (1972) footnote seven.

THE RELATIONSHIP INVOLVED, OBJECTIVES TO BE ATTAINED AND FORCES AT WORK IN A COMMON SCHOOL SYSTEM ARE DISSIMILAR FROM ANY TYPICAL AREA OF ADULT INVOLVEMENT.

9. Appellees and their friends evince an almost wooden preoccupation with the need for a hearing within the framework of academic discipline. That preoccupation does not permit them to recognize the relationship

6. Compare this case with the careful analysis of "property" and the evolution of "property rights" to be found in *Cannady v. Person County Board of Education*, 375 F.Supp. 689, 700-701 (1974).

involved and at work in administering a common school system. Their view of the area can easily be characterized as one which attempts to reduce all situations to one where the prime objectives are akin to those at work in a determination of criminal responsibility. [Brief of American Civil Liberties Union, p. 6, footnote 5.] Appellants do not have to resort to the doctrine of *in loco parentis* to state with certainty that the parties involved, the relationship that exists and must exist between those parties, and the objectives to be attained in the operation and administration of a common school system cannot be resolved into a convenient question of accusation and the assessment of culpability.

10. Appellees and their friends in discussing what could be categorized as a chamber of horrors of problems experienced by children, completely miss the point and the frame of reference within which conduct within the common school classroom and school buildings must be viewed. Lost in such an approach is the relationship that exists between principal, teacher and student, with the student being a person possessed of varying degrees of maturity or no maturity at all. The problems to be confronted in a common school classroom or school building do not reduce themselves to a simple question of creating a fault-finding process. "Discipline in a school classroom or building is not very different from discipline at home." Dr. James Dobson, *Dare to Discipline*, Tyndale House Publishers (1972) 27. The chief issues that must be faced, in a school setting today, in order to promote an atmosphere in which education (i.e., the choice to pursue and acquire knowledge) can be fostered, relate to creating between principal, teacher and student respect, a sense of responsibility, an awareness of the boundaries of acceptable behavior and an element of self discipline.

Engrafting upon the present system what is tantamount to an adversary relationship in which the authority of the teacher or principal is made subject to a fault-finding process will not promote these objectives. Academic discipline in the present system of common schools represents an attempt to reflect and foster these principles. It is not and should not be associated with a process which is very much akin to the fault-finding process at work in criminal law. Punishment or discipline in the school setting is not imposed for punishment's sake and should not be viewed in that light. Appellees and their friends do not and cannot point to any system wherein education, as defined by appellants and this Court, has been fostered by turning academic discipline into an adversary relationship. Contrary to appellees and their friends' assertions relating to the improper use of discipline, the authorities are not in agreement concerning the use of discipline within today's common school system. As pointed out by Dr. Dobson:

> "The degree of student control exercised by school authorities has never been so minimal as it is today in America. Some concerned parents are refusing to send their children to school until safety can be guaranteed. We simply must restore a greater semblance of order in our junior and senior high schools, yet the trend at this time is toward more and more student autonomy. Educational discipline is still on the wane, as is reflected in the elimination of traditional rules and regulations." Dobson, *Dare to Discipline, supra*, 93.

Questions of child rearing both at home and within the schoolhouse which must include and involve academic discipline cannot be equated with problems surrounding the grant of welfare benefits, the grant of a

drivers license, the seizure of admitted personal property or with the myriad of constitutional protections surrounding criminal law. Such an approach treats a very complex area of personal relationships in a far too simplistic manner. What appellees and their friends ultimately seek is full autonomy for children of primary and secondary school age. Such an approach involves critical questions of policy including questions relating to whether or not the system of common schools should be retained. Academic discipline does not involve a denial of education as appellants have defined the term, if this Court still adheres to the concept expressed in *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228, 234 (1968) to the effect:

> "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." [7]

The conclusion does follow that §3313.66 of the Ohio Revised Code does not directly and sharply implicate basic constitutional values, and the question of the kind of academic discipline that will prevail in today's common school system is a question to be resolved by parents, teachers, administrators and the various legislative bodies exercising their own best judgment. Parents are beginning to respond to that question of policy regarding the kind of classroom structure and academic discipline they want. Diane Divoky, *Opting For An Old-Fangled Alternative*, Learning Magazine (February, 1974) 13.[8]

7. The comments of Justice Black in *Karr v. Schmidt*, 401 U.S. 1201, 1202, 27 L.Ed.2d 797 (1971) relating to the power of the states absent the involvement of a specifically identified constitutional interest buttress this recognition of local decision making power.

11. The concept of education which is portrayed in the briefs submitted by appellees and their friends is one which reduces a very complex pursuit to a question of class attendance and booklearning. Education, the pursuit of knowledge and corresponding personality growth, involves much more. Particularly in this conclusion true in the primary and secondary school area. Concepts of citizenship, respect for authority, self discipline and responsibility are very much a part of the fabric of the pursuit of knowledge. It is a mistake to equate academic discipline with the assessment of criminal responsibility. It is an even greater mistake to insist, in substance, that a teacher or prncipal should be more concerned with the assessment of cupability than with the personality entrusted to his care. [Brief of the Children's Defense Fund, p. 11.]

CONCLUSION

In the present case, where the question presented is a narrow one, it does no violence to the distinction between the concepts of equal protection of the law and due process to give recognition to this Court's rationale in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 29, 35-37; 36 L.Ed.2d 16 (1973). Certainly this Court in *Roe v. Wade*, 410 U.S. 113, 35 L.Ed.2d 147 (1973) did not maintain a rigid demarcation between equal protection and due process. *Roe v. Wade*, 410 U.S. at 173, dissenting opinion of Justice Rehnquist. The comprehensive inquiry of this Court in *Rodriguez*, 411 U.S. at 29-37, relating to education is at least helpful in the search for an interest protected by the Constitution. *Rodriguez*, 411 U.S. at 62, concurring opinion of Justice Stuart. That

8. Exploration of the social relationship that should exist between principal, teacher and student is also taking place. The establishment of an adversary relationship is not an alternative being considered. Alfred Alschuler and John V. Shea, *The Discipline Game: Playing Without Losers*, Learning Magazine (August/September 1974) 80, 86.

rationale demonstrates that the statute under review, §3313.66 of the Ohio Revised Code, impinges upon no right of liberty or property secured by the Constitution.

The record of this cause does not demonstrate that appellees' broad liberty recognized in *Pierce v. Society of Sisters of Holy Names*, 268 U.S. 510, 69 L.Ed. 1070 (1925) and *Meyer v. Nebraska*, 262 U.S. 390, 67 L.Ed. 1042 (1923) was ever sharply implicated. The record of this cause does illustrate the problems that arise surrounding the internal operation and management of a system of common schools, including the judgmental decisions that must be made. It was within the discretionary power possessed by the Ohio legislature, acting to restrict the power previously granted to principals, to equate a suspension of ten days with other forms of minor academic discipline not requiring a hearing, while at the same time requiring a hearing where the academic discipline imposed is expulsion. *Linwood v. Board of Education of Peoria*, 463 F.2d at 769 (1972).

Appellees did not prove that §3313.66 of the Ohio Revised Code, the conduct of the involved principals or the rules and regulations of any particular school were motivated by other than legitimate school concerns. *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526; 21 L.Ed.2d 731, 749 (1968) dissenting opinion of Justice Harlan.

The judgment of the District Court should be reversed.

Respectfully submitted,

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